

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
DELMARVA POWER & LIGHT COMPANY) PSC Docket No. 17-0978
FOR AN INCREASE IN NATURAL GAS)
BASE RATES (FILED AUGUST 17, 2017))

ORDER NO. 9399

AND NOW, this 21st day of May 2019:

WHEREAS, the Delaware Public Service Commission (the "Commission") has considered the Hearing Examiner's Proposed Findings and Recommendations ("HEFR") issued February 14, 2019, which, among other findings and conclusions, reached the legal conclusion that the business judgment rule applied to determine the issue of the recovery of the \$3,452,713 of labor costs that Delmarva Power & Light Company ("Delmarva" or the "Company") incurred to replace batteries in all of the Interface Management Units ("IMU") that had been installed on its gas meters after Delmarva discovered that some of the batteries were defective and the vendor refused to pay for all of the labor costs for replacing all of the batteries; and ;

WHEREAS, the Delaware Division of the Public Advocate ("DPA") and Commission Staff ("Staff") filed joint exceptions to the HEFR, asserting (among other things) that the Hearing Examiner's application of the business judgment rule to the recovery of the incremental battery labor costs was incorrect because the additional labor costs were extraordinary expenses, not ordinary (the "Exceptions");¹ and

¹ Delmarva Power & Light Company ("Delmarva" or the "Company") also filed exceptions to the Hearing Examiner's Report asserting that the Company should be entitled to the carrying costs as well as recovery of the actual labor expenses. Because we are by this order remanding the matter to the Hearing Examiner for further findings, the

WHEREAS, the Commission heard oral argument from the parties at its regularly scheduled meeting on April 16, 2019;

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NO FEWER THAN THREE COMMISSIONERS THAT:

1. The Commission finds that the application of the business judgment rule to the recovery of the incremental labor costs associated with the replacement of the IMU batteries is incorrect because those expenses are extraordinary, not ordinary utility costs.²

2. Based on the Superior Court's decision in *Chesapeake Utilities Corporation v. Delaware Public Service Commission*,³ the Commission finds that operating expenses are generally defined as the costs of producing utility service or that are required to keep the utility running. They are expenses normally incurred in the course of the utility's ordinary activities and may include "maintenance and repair, payroll, insurance premiums, taxes paid, legal expenses, collection costs and advertising fees."⁴

3. The IMUs were originally installed as part of the Company's movement to Advanced Metering Infrastructure ("AMI") technology, and Delmarva requested and received regulatory asset ratemaking treatment for the costs of converting both its electric and natural gas utility businesses to AMI technology. On the natural gas side of the business, those costs included the original installation of the IMU units and the batteries that operated them. Here we find that the additional costs

issue raised by Delmarva is unnecessary for us to decide at this time. *See, e.g., Delmarva Power & Light Company v. Public Service Commission*, 508 A.2d 849 (Del. 1986).

² The "Delaware Business Judgment Rule" permits recovery of expenses that are not the product of bad faith, waste or abuse of discretion. *Id.* at 859-60.

³ 705 A. 2d 1059 (Del. Super. 1997).

⁴ *Id.* at 1068-69.

associated with the replacement of IMU batteries that prematurely failed were extraordinary, not ordinary, expenses because the batteries were not expected to fail prior to their 10-15 year life expectancy. The Commission finds that the incremental labor costs incurred to replace all of the defective batteries are extraordinary; therefore, the Hearing Examiner's application of the business judgment rule to their recovery was inappropriate.

4. Since we find that these expenses are extraordinary costs, rather than normal utility operating expense costs, we remand this matter back to the Hearing Examiner for further recommendations based on our determination that the expenses were not incurred to keep the utility running during normal operations, and therefore the recovery of those expenses by the utility should be reviewed under a different standard than the business judgment rule.

5. We request that the Hearing Examiner perform his review consistent with our determination that the incremental labor costs incurred for replacing all of the IMU batteries are extraordinary, and that he recommend the appropriate standard by which we should judge the potential recoverability of these costs, and apply that standard to the issue of whether Delmarva may recover the incremental labor costs.

6. The Commission retains jurisdiction and authority to enter such further orders in this docket as may be deemed just and reasonable.

BY ORDER OF THE COMMISSION:

Chairman

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary